IN THE

Supreme Court of the United States

October Term, 1934

No. 15

CHARLES L. MCNALLY,
Petitioner,

v.

HENRY C. HILL, Warden, United States Northeastern Penitentiary, Lewisburg, Pennsylvania.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE PETITIONER.

Petitioner rests upon his brief in support of petition for certiorari herein and upon his brief in reply to respondent's brief opposing issuance of writ of certiorari upon which this case is reviewed.

Notwithstanding the arguments of the respondent, all the questions of law were raised on the motion in arrest of judgment. On this motion the jurisdiction of the Court to sentence was raised. The count of the indictment here challenged did not give the Court jurisdiction to try the defendant or to sentence him. For the purposes of this proceeding, it may be conceded the pleader was attempting to allege a crime within the statute, but the indictment does not allege a crime.

The Court cannot get jurisdiction to try and sentence on a prosecutor's attempt to plead a crime. It can get jurisdiction only when the prosecutor pleads a crime.

No determination of the Court below can preclude this Court from its duty to discharge a prisoner who is sentenced without jurisdiction by the Court below.

We respectfully submit that under the *Grimsley* case, the *Davidson* case, the *Brooks* case and the *Ventimiglia* case cited in Point III, page 14, of the petitioner's brief in support of the petition for certiorari, the petitioner is entitled to his discharge.

Respectfully submitted,

JOHN S. WISE, JR.,
Attorney for Petitioner,
27 Cedar Street,
New York City.